

Agreement).

Page 48-49 of the existing DeltaCom/BellSouth Agreement addresses Network Design and Management. The language in this section requires cooperation between the parties to install and maintain reliable interconnection telecommunications networks. This section requires BellSouth to provide public notices of changes in information necessary for transmission and routing of services as well as other changes that could affect the interoperability of local exchange facilities and networks. The section requires exchange of information between DeltaCom and BellSouth to achieve reliability; coordination of repair procedures is also required.

For network expansion the parties agree to review engineering requirements on a quarterly basis and establish a forecast for trunk utilization with new trunk groups added as warranted. Sound network management principles are required.

Pages 32-33 of the existing agreement address Number Resource arrangements. This section sets out guidelines for numbering resources. The section specifies that the parties agree to comply with the guidelines, plans, or rates adopted pursuant to 47 USC §251(e) at the time this agreement was signed. BellSouth was administering number. Since that time, an independent numbering administrator has been assigned.

DeltaCom did not provide specific areas of concern for the provision within the agreement for cross-connect fees, reconfiguration charges, network redesigns, and NXX translations. We believe that most of the requirements within these sections are valid requirements. However, DeltaCom does not address its specific concerns with these sections. Absent this specificity, we are inclined to agree with BellSouth concerning the issues other than binding forecasts

Conclusion on Issue 5

Based upon the foregoing, the Arbitration Panel concludes that the Commission has jurisdiction under the provisions of 47 U.S.C. §§251 and 252 to require BellSouth to include a binding forecast provision in its interconnection agreement with DeltaCom. The arbitration Panel accordingly finds that BellSouth should be required to include in its interconnection agreement with DeltaCom a provision, which requires binding forecasts.

The Findings and Conclusions of the Commission as to Issue No. 5

The Commission concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 6(a) - Rate and Charges for BellSouth OSS (Att. 11)

What charges, if any should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth OSS?

The ITC^DeltaCom Position

DeltaCom claims that each carrier should be responsible for its own OSS development costs. DeltaCom argues that the development of OSS is a cost associated with the

transition to a competitive market, which was imposed by Congress on incumbent local exchange carriers. Thus, the Commission should not allow BellSouth to collect these development costs from the CLECs.

The BellSouth Position

BellSouth argues that this Commission has already authorized BellSouth to recover the costs of OSS from the CLECs in Docket 26029. That docket established the costs for unbundled network elements. Also, the Commission approved interim rates for electronic ordering by resellers in Docket 26800 according to BellSouth. The Commission has also established a generic docket to establish permanent rates for OSS for resellers using electronic interfaces. According to BellSouth the pricing standards for unbundled network elements in Section 252(d)(1) of the 1996 Act do not require competitive neutrality. Thus BellSouth claims that it is justified in collecting both the development costs and usage costs from the CLECs.

Discussion of Issue 6(a)

DeltaCom has proposed that BellSouth bear the costs of its OSS just as DeltaCom has to bear its own costs for OSS interfaces. However, in Docket 26029 the Commission has allowed BellSouth to recover the OSS costs. Docket 26029 contains data that is three to four years old. Thus, the Commission should consider revising the docket or opening a new docket to consider updating all of the UNE rates. However, considering the recent Eighth Circuit's decision on July 18, 2000, (*IOWA Utilities Board, et al., Petitioners, Federal Communications Commission and United States of America, Respondents*) regarding pricing methodologies, the Commission should determine whether a new docket should be opened at this time or at a later date.

Conclusion on Issue 6(a)

Because there have been many changes since this Commission established the rates for UNE's in Docket 26029, the arbitration panel recommends that the Commission establish a docket to reevaluate the rates for BellSouth's unbundled network elements (UNEs) and to consider any combinations of UNEs deemed necessary, as well the rates for those combinations. However, the Eighth Circuit's recent decision regarding the FCC TELRIC pricing rules has created uncertainty regarding UNE pricing. Thus, we believe any consideration of UNE rates should be delayed until the pricing rules are clearly defined.

The Findings and Conclusions of the Commission as to Issue No. 6(a)

The Commission concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 6(b) - Rates and Charges for UNEs (Att. 11)

What are the appropriate recurring and non-recurring rates and charges for BellSouth two-wire and four-wire ADSL/HDSL compatible loops, two-wire SL2 loops, two-wire SL1 loops, two-wire SL2 loop order coordination for specified conversion time?

The ITC^DeltaCom Position

DeltaCom states that BellSouth and DeltaCom failed to reach agreement on the non-recurring and recurring rates for two wire and four wire unbundled loops, service level two. The parties also did not reach agreement for non-recurring rates for two wire and four wire HDSL loops, and two-wire and four-wire ADSL loops. DeltaCom also points out that rates have not been developed for combinations of unbundled network elements such as the extended loops. According to DeltaCom, these rates should be developed to take into consideration any cost savings that result from the fact that the UNEs need not be physically separated. DeltaCom contends that the FCC's pricing rules were reinstated by the U.S. Supreme Court in *AT&T Corp. v Iowa Utilities Bd.*, 525 U.S. 366, 119S. CT. 721, 142L.ED.2d.835 (1999). DeltaCom argues that pursuant to those rules, BellSouth should adjust its fill factors and assume the utilization of IDLC technology. Prefiled Rebuttal Testimony of Don Wood, pp.10-12. DeltaCom alleges that higher fill factors result in a decrease of the cost of UNEs by 5-6 percent. According to DeltaCom these adjustments will not bring BellSouth's cost study into compliance but will move in that direction. DeltaCom contends that BellSouth's cost study in Docket 26029 was based upon the fact that an appeals court stayed the FCC's pricing rules at the time of the study. In its order in that docket, this Commission recognized this fact and stated that modifications might have to be made after the issues are been fully litigated. See Docket 26029, pages 1-2. DeltaCom insists that BellSouth's cost model in Docket 26029 cannot be used to produce prices that are TELRIC based and does not develop relevant prices for combinations of unbundled network elements. DeltaCom developed interim rates for certain UNEs as follows:

Unbundled Loop, Two wire, SL1	\$15.99
Unbundled Loop, Two wire, SL2	\$19.38
Unbundled Loop, Four wire	\$25.20
ADSL Loop, Two wire	\$14.20
HDSL Loop, Two wire	\$11.05
HDSL Loop, Four wire	\$13.53

DeltaCom based these rates upon adjustments to the rates established in Docket 26029. The adjustments included higher fill factors and adoption of a forward looking technology.

The BellSouth Position

BellSouth avers that the rates for unbundled network elements were set in Docket 26029. BellSouth asserts that these rates are cost based and comply with the 1996 Act and applicable FCC rules. Further, BellSouth contends that DeltaCom has not presented any evidence that these rates should be revisited. BellSouth also points out that DeltaCom has not made any proposals for recurring charges for two-wire ADSL and HDSL compatible loops, four-wire HDSL compatible loops, and SL1 and SL2 loops. With regard to non-recurring rates, BellSouth alleges that Mr. Hyde's proposals are arbitrary and not supported by empirical data or analysis.

BellSouth asserts that its model is based upon the FCC's TELRIC methodology and that the Commission made several adjustments to assure that the studies were forward looking. No party appealed the Commission's final order in Docket 26029; thus BellSouth alleges that these rates are lawful. BellSouth points out that the Florida Commission rejected

DeltaCom's proposed adjustments to BellSouth's cost studies, as did South Carolina. BellSouth Exhibit 1, South Carolina Order, page 85, Florida Staff Recommendation pp. 71-88.

Discussion of Issue 6(b)

BellSouth must provide UNEs to DeltaCom at cost based rates that comply with Section 252(d) of the Act and with the FCC's pricing rules. We agree with DeltaCom that more consideration should be given to forward looking technologies such as integrated digital loop carrier. DeltaCom's contention of higher fill factors may also be reasonable. However, we think that the evaluation of these issues should be dealt with in a generic cost docket, which assesses these issues and other valid issues. We note that the hearing for UNE cost docket (Docket 26029) was held in September 1997. The actual data in that docket was 1996 data. BellSouth also utilized estimates to determine its costs for unbundled network elements. Much has changed since 1996 when the Telecommunications Act was passed. Thus, we think that the docket should be revisited to provide for utilization of newer and better technologies. Recognizing that changes have occurred since this docket was heard, we recommend that the Commission establish a docket to update the rates for BellSouth unbundled network elements. We also note that while this arbitration was being considered, the Commission developed deaveraged rates for specific unbundled network elements. The Commission developed deaveraged rates for each of the unbundled network elements specified by DeltaCom. Thus, DeltaCom can purchase the unbundled network elements at the deaveraged rates established by the Commission in Docket 25980 on April 24, 2000, until a new cost docket can be scheduled.

Conclusion to Issue 6(b)

Because there have been many changes since this Commission established the rates for UNE's in Docket 26029, the Arbitration Panel recommends that the Commission establish a docket to reevaluate the rates for BellSouth's unbundled network elements (UNEs) and to consider any combinations of UNEs deemed necessary as well as the rates for those combinations. However, the Eighth Circuit's recent ruling regarding the FCC TELRIC pricing rules has created uncertainty regarding UNE pricing. Thus, we believe that any consideration of UNE rates should be delayed until the pricing rules are clearly defined.

The Findings and Conclusions of the Commission as to Issue No. 6(b)

The Commission concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 6(d)- Rates and Charges for Collocation (Att. 11)

What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48 issued March 31, 1999, in Docket No. CC 98-147?

The ITC^DeltaCom Position

DeltaCom proposes that the Commission establish interim rates for cageless collocation based upon BellSouth's rates for virtual collocation with adjustments to remove

charges for installation, maintenance and repair and training. DeltaCom contends that the FCC's description of cageless collocation mirrors the characteristics of a virtual collocation arrangement. Tr. 275-276. However, under a virtual collocation arrangement, the CLEC does not have physical access to the ILEC premises, and the CLEC's equipment is under physical control of the incumbent LEC (including installation, maintenance, and repair responsibilities). From a cost and rate perspective, the characteristics of virtual collocation arrangement are the same as a cageless arrangement. Tr. 277.

The BellSouth Position

BellSouth witness, Varner, claims that BellSouth has offered cageless collocations since late 1996 or early 1997. He also claims that the UNE cost docket in Alabama covers pricing for cageless collocation. Tr. 743. BellSouth points out that two state commissions have rendered decisions in the DeltaCom arbitration and have rejected the argument that cageless collocation is similar to virtual collocation. See BellSouth Exhibit 2, South Carolina Order, at 92; BellSouth Exhibit 4, Florida Staff Recommendation, at 104, 113. BellSouth also proposed an interim rate for a keyless security access system in order to comply with the FCC's Advanced Services Order. This interim rate is based upon a rate approved by the Florida Public Service Commission. Tr. 801-802. DeltaCom has not raised any objection to the interim rate for keyless security access system. BellSouth also proposed rates for fiber cross connects and fiber pot bays that DeltaCom may require for shared or cageless collocation. These rates are based on cost studies developed consistent with the methodology adopted by the Commission in Docket 26029 according to BellSouth witness, Caldwell. Tr. 1026.

Discussion of Issue 6(d)

We note that the FCC First Report and Order and Further Notice of Proposed Rulemaking in *the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, March 18, 1999*, stated in paragraph 39 that incumbent LECs must provide specific collocation arrangements, consistent with the rules outlined, at reasonable rates, terms, and conditions as are set by state commissions in conformity with the Act and FCC rules.

The rates for physical collocation in Alabama are contained in the Attachments to the Order in Docket 26029. Since the Alabama Commission adopted the FCC's rates for virtual collocation, the rates for virtual collocation in Alabama are contained in BellSouth's Access Tariff - FCC#1, Section 20. The maintenance costs applied to virtual collocation are in BellSouth's Access Tariff - FCC #1, Section 13.

We have reviewed Florida's rates for physical collocation in relation to those established in Alabama. Since Florida adopted its physical collocation rates for cageless collocation, we reviewed Florida's rates for physical collocation as set forth in FPSC Order No. PSC-96-1579-FOF-TP, issued April 29, 1998.

We found that the nonrecurring rates for physical collocation were lower in Florida than in Alabama as evidenced by a comparison of the application fees in each state. Florida's application fee for physical collocation is \$3,248; Alabama's application fee is \$7,124. Also the cable installation rate is also higher in Alabama than in Florida. Cross-connects are also higher in Alabama.

Alabama's virtual collocation rates are the rates set for virtual collocation by the FCC. Again, these rates are lower than the rates set in Alabama for physical collocation. See the BellSouth tariff FCC #1 for the details of the rates for virtual collocation. We note that many of the costs, which BellSouth utilizes in its cost model, are regional in nature. Thus, the differences between Florida and Alabama rates cannot be attributed to differences in costs.

We believe that the FCC in its March 1999 Advanced Services Order viewed cageless collocation to be a more efficient alternative to physical caged collocation. We also believe that cageless collocation is more efficient than caged collocation in many cases. We do not believe that applying Alabama's rates for physical collocation accomplishes the goal of the FCC.

If we were to apply the rates set in Alabama for physical collocation, the high application fee would apply to both caged and cageless collocation. In fact, most of the rates would apply. The only savings that DeltaCom would see would be in space construction and possibly space preparation costs. We believe that the FCC intended for the CLECs to benefit from the efficiencies of cageless collocation. These benefits include both time and cost savings. Thus, we recommend that the Commission apply the FCC's rates for virtual collocation to cageless collocation until this Commission establishes rates for cageless collocation in a cost docket. We note that the rates in the FCC tariff for installation, maintenance and repair, and training will not apply to cageless collocation to the extent that DeltaCom performs these tasks for itself. Absent any rate for keyless security access in BellSouth's Access Tariff FCC #1 and absent any objection by DeltaCom, we recommend that the rate for keyless security proposed by BellSouth witness, Caldwell, be adopted for this component.

Conclusion on Issue (6)(d)

The Arbitration Panel recommends that the Commission apply BellSouth's virtual collocation rates in BellSouth's Access Tariff FCC #1 to cageless collocation in this arbitration proceeding, as well as Daonne Caldwell's rate for keyless security access. We also recommend that the Commission reevaluate the BellSouth UNE rates in a cost docket and establish rates for cageless collocation in that docket. However, the Eighth Circuit's recent decision regarding the FCC TELRIC pricing rules has created uncertainty regarding UNE pricing. Thus, we believe that any consideration of UNE rates should be delayed until the pricing rules are clearly defined.

The Findings and Conclusions of the Commission as to Issue No. 6(d)

The Commission concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 7(b)(iv) - Audits (Att. 3 - 2.0)

Which party should be required to pay for the Percent Local usage (PLU) and the Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?

The ITC^DeltaCom Position

DeltaCom contends that each party pays for its own audit regardless of the outcome. Tr. 138.

The BellSouth Position

BellSouth contends that the party, which overstates the PLU/PIU percentages by 20 percentage points or more, should pay for the audit.

Discussion of Issue 7(b)(iv)

DeltaCom is correct in contending that BellSouth does not want penalties assessed on it for OSS problems but is willing in this instance to assess penalties for misstated PLU/PIU percentages. Mr. Varner stated the party requesting the audit generally pays for the audit, but the language regarding overstatement of PLU/PIU percentages is standard in its interconnection agreements and should be in the DeltaCom agreement. Tr. 804.

Conclusion on Issue 7(b)(iv)

We agree with DeltaCom that the party requesting the audit should pay for the audit. Since this is generally the case, we see no reason to impose any penalty upon a party unless an overstatement of the PLU/PIU percentage is shown to be intentional.

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The Findings and Conclusions of the Commission as to Issue No. 7(b)(iv)

The Commission concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 8(b) - General contract Issues - Loser Pays (GTC - 11)

Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement be required to pay the costs of such litigation?

The ITC^DeltaCom Position

DeltaCom witness, Rozycki, stated that the "loser pays" proposal for arbitrations and complaints would reduce the amount of litigation before the Commission. Tr. 141. Mr. Rozycki contended that if BellSouth were made responsible for the legal expenses associated these cases, they might think twice before forcing CLECs to file complaints or other claims against BellSouth. Tr. 141. DeltaCom contends that "loser pays" is conducive to settlement, deters frivolous litigation, acts in part as a self-effectuating performance guarantee and will create equity in the regulatory process.

The BellSouth Position

Al Varner, testifying for BellSouth, stated that the loser pays proposal would have a chilling effect on both parties to the extent that even meritorious claims would not be filed. Mr. Varner went on to say that often there is no clear winner or loser thus further complicating the use of the loser pays clause. Varner indicated that BellSouth would agree to appropriate language regarding jurisdictional issues that would allow the parties to seek damages under the agreement from the courts since that would be a matter outside the Commission's jurisdiction. He stated that the parties should determine where disputes would be resolved thus preventing

forum shopping. Tr. 806. The 1996 Act clearly represents an evolving area of rule and regulation that will require interpretation and guidance from state commissions for some time. In times of such uncertainty, there may be no clear "winner" or "loser", which further complicates the use of a "loser pays" clause. Such a provision may well discourage carriers from seeking to establish or clarify their rights under existing interconnection agreements, which is hardly in the public interest.

Conclusion on Issue 8(b)

The Commission's policy regarding this issue is that each party is responsible for its own litigation costs. This policy underlies Telephone Rule-30²⁸ and would apply to enforce arbitrated interconnection agreements as well.

The Findings and Conclusions of the Commission as to Issue No. 8(b)

The Commissions concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 8(e) - General Contract Issues - Tax Liability (GTC - 13.1; Att. 1 - 11.5) ✓

Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each party is responsible for its tax liability?

The ITC^DeltaCom Position

DeltaCom alleges that the previous agreement between DeltaCom and BellSouth did not contain language regarding taxes, and there is no evidence that failure to include such language has created a problem. DeltaCom charges that the wording proposed by BellSouth is not even found in this record. DeltaCom has proposed its own language to be substituted for the disputed language but BellSouth did not accept that language. However, DeltaCom contends that the language is not necessary and the parties should be directed to simply comply with the law.

The BellSouth Position

BellSouth maintains that the proposed tax language is in numerous agreements and should not be changed. According to BellSouth this language is necessary because disputes arise regarding taxes and the interconnection agreement should clearly define the respective rights and duties of each party. BellSouth maintains that language is based upon BellSouth's experiences with tax matters and should be included in the agreement.

Discussion of Issue 8(e)

No matter what position this panel takes on tax language in agreements, the panel cannot supercede existing law. For that reason alone, the panel is inclined to believe that language in agreements regarding taxes may be unnecessary. Insofar as precise language as to taxes in

²⁸ Docket No. 15957, of the Telephone Rules of the Alabama Public Service Commission, Rule T30:

Each party in arbitration or mediation proceedings shall be responsible for bearing their own fees and costs and shall pay any fees imposed by the Commission as allowed by statute.

agreements may prevent disputes, the panel believes such tax language should probably be in agreements, although the language may not necessarily be the same in all agreements.

Conclusion on Issue 8(e)

Absent language mutually agreeable to both parties, the language regarding taxes should be stricken from the agreement.

The Findings and Conclusions of the Commission as to Issue No. 8(e)

The Commissions concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

Issue 8(f) Breach of Contract (GTC - 25)

Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?

ITC^DeltaCom's Position

DeltaCom asks that contracts include a provision that a material breach of the interconnection agreement will give rise to liability. DeltaCom argues that BellSouth will not be prejudiced by the inclusion of such a provision.

BellSouth's Position

The issue of compensation for breach of contract, penalties, or liquidated damages is not an appropriate matter for arbitration under the 1996 Act. DeltaCom's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. DeltaCom has adequate legal recourse in the event BellSouth breaches its interconnection agreement.

Conclusion on Issue 8(f)

The Panel concludes that DeltaCom has other adequate state and federal remedies available. Additionally, the parties themselves can negotiate and provide for mutually acceptable agreements, terms, and penalties for any breach of material terms of a contract.

The Findings and Conclusions of the Commission as to Issue No. 8(f)

The Commissions concurs with the findings and conclusions of the Arbitration Panel concerning this issue. We accordingly adopt the findings and conclusions of the Arbitration Panel in that regard as our own.

IT IS SO ORDERED BY THE COMMISSION

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in this premises.

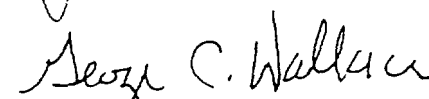
IT IS FURTHER ORDERED, That this Order shall become effective as of the date hereof.

DONE at Montgomery, Alabama this 27th day of September, 2000.

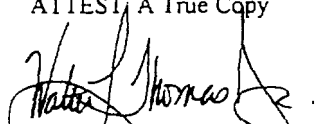
ALABAMA PUBLIC SERVICE COMMISSION


Jim Sullivan, President


Jan Cook, Commissioner


George C. Wallace, Jr., Commissioner

ATTEST, A True Copy


Walter L. Thomas, Secretary

DOCKET 27091
APPENDIX A

California. Opinion-Decision 99-06-088, *In the Matter of Petition of Pacific Bell for Arbitration with Pac-West*, Application 98-11-024 (Cal. Pub. Util. Comm'n June 24, 1999)

California. Order Modifying and Denying Application for Rehearing of Decision 98-10-057 - Decision 99-07-047, *Order Instituting Rulemaking and Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, 95-04-043 (Rulemaking) and 95-04-044 (Investigation) (Cal. Pub. Util. Comm'n July 22, 1999)

Delaware. Arbitration Award, *In the Matter of the Petition of Global Naps South for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Bell Atlantic-Delaware*, PSC Docket No. 98-540 (Del. Pub. Serv. Comm'n Mar 9, 1999)

Delaware. Order No. 5902 and Findings and Opinion to Accompany Order, *In the Matter of Application of Global Naps South for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Bell Atlantic-Delaware*, PSC Docket No. 98-540 (Del. Pub. Serv. Comm'n June 22, 1999)

Florida. Order Resolving Complaint and Notice of Proposed Agency Action and Order Requiring Determination of Terminated Traffic Differential, Order No. PSC-00-0638-FOF-TP, *In re: Request for Arbitration Concerning Complaint of ACSI and e-spire against BellSouth*, Docket No. 981008-TP (Fla. Pub. Serv. Comm'n Apr. 6, 1999)

Florida. Order on Arbitration of Interconnection Agreement, Order No. PSC-99-1477-FOF-TP, *In re: Request for Arbitration Concerning Complaint of Intermedia Against GTE Florida*, Docket No. 980986-TP (Fla. Pub. Serv. Comm'n July 30, 1999)

Georgia. *Complaint of U.S. LEC of Georgia, Inc. v. BellSouth Telecommunications, Inc. and Request for Immediate Relief*. (Ga. Pub. Serv. Comm'n July 2000)

Georgia. Order in *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 10767-U. (Ga. Pub. Serv. Comm'n Feb. 1, 2000)

Hawaii. Decision and Order 16975, *In the Matter of the Petition of GTE Hawaiian for a Declaratory Order*, Docket No. 99-0067 (Haw. Pub. Util. Comm'n May 6, 1999)

Indiana. Order on Reconsideration, *In the Matter of the Complaint of Time Warner Against Indiana Bell for Violation of the Terms of the Interconnection Agreement*, Cause No. 41097 (Ind. Util. Reg. Comm'n June 9, 1999)

Kentucky. Order in Case No. 98-212. *Hyperion Communications of Louisville, Inc. F/KIA Louisville Lightware*. (Kentucky Pub. Serv. Comm'n May 16, 2000)

Maryland. Order No. 75280, *In the Matter of the Complaint of MFS Intelnet against Bell Atlantic-Maryland for Breach of Interconnection Terms and Request for Immediate Relief*, Case No. 8731 (Md. Pub. Serv. Comm'n June 11, 1999)

Michigan. Complaint: *In the Complaint of Coast to Coast Telecommunications, Inc. v. GTE North and Contel of the South, Inc. d/b/a 'GTE Systems of Michigan.'* Case No. U-12090, (Feb. 22, 2000)

Minnesota. Order Denying Petition, *In the Matter of the Petition of US West for a Determination that ISP Traffic Is Not Subject to Reciprocal Compensation*, Docket No. P-421/M-99-529 (Mn. Pub. Util. Comm'n Aug 17, 1999)

Nebraska. Findings and Conclusions. *In the Matter of the Application of the Nebraska Public Service Commission, on its own Motion, to conduct an investigation of the interstate or*

local characteristics of internet service provider traffic. (Nebraska Pub. Serv. Comm'n December 7, 1999)

Nevada. Arbitration Decision, *In re Petition of Pac-West for Arbitration to Establish Interconnection Agreement with Nevada Bell*, Docket No. 98-10015 (Nev. Pub. Util. Comm'n Mar. 4, 1999)

Nevada. Order Adopting Revised Arbitration Decision and Revised Arbitration Decision, *In re Petition of Pac-West for Arbitration to Establish Interconnection Agreement with Nevada Bell*, Docket No. 98-10015 (Nev. Pub. Util. Comm'n Apr. 8, 1999)

New York. Order Instituting Proceeding to Reexamine Reciprocal Compensation, *Proceeding on Motion of Commission to Reexamine Reciprocal Compensation*, Case No. 99-C-0529 (N.Y. Pub. Serv. Comm'n Apr. 15, 1999)

New York. Opinion and Order Concerning Reciprocal Compensation, *Proceeding on Motion of Commission to Reexamine Reciprocal Compensation*, Case No. 99-C-0529 (N.Y. Pub. Serv. Comm'n Aug. 26, 1999)

North Carolina. Recommended Arbitration Order *In the Matter of Petition of ICG Telecom Group, Inc. For Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc.* (N.C. Util. Comm'n, Docket No. P-582, Sub. 6, Nov. 4, 1999) Recommended Arbitration Order: *In the Matter of Petition by ITC^DeltaCom Communications, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. P-500, Sub. 10 (April 20, 2000) Recommended Arbitration Order, *In the Matter of Petition of BellSouth Telecommunications, Inc. for Arbitration of Interconnection Agreement with Intermedia Communications*, Docket No. P-55, Sub. 1178, (June 13, 2000)

North Carolina. Recommended Arbitration Order: *In the Matter of Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc and Time Warner Telecom of North Carolina, L.P.* Docket No. P-472, Sub. 15, (Mar. 13, 2000)

Ohio. Entry on Rehearing, *In the Matter of the Complaints of ICG, MCImetro, and Time Warner v. Ameritech Ohio Regarding the Payment of Reciprocal Compensation*, Case No. 97-1557-TP-CSS, et al. (Oh. Pub. Util. Comm'n May 5, 1999)

Oregon. Commission Decision, Order No. 99-218, *In the Matter of Petition of Electric Lightwave for Arbitration of Interconnection with GTE Northwest*, ARB 91 (Or. Pub. Util. Comm'n Mar. 17, 1999)

Oregon. Commission Decision Order No. 99-770 *Before the Public Utility Commission of Oregon UC 377 Electric Lightwave Inc. Complainant vs. US West Communications, Inc, Respondent* (December 22, 1999)

Pennsylvania. Joint Motion of Chairman Quain and Commissioners Rolka, Brownell & Wilson, *Joint Petition for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, P-00991648 and P-00991649 (Penn. Pub. Util. Comm'n Aug. 26, 1999)

Rhode Island. Order, *Re: NEVD of Rhode Island Petition for Declaratory Judgement*, Docket No. 2935 (R.I. Pub. Util. Comm'n July 21, 1999)

Tennessee. First Order of Arbitration Award, *In Re: Petition of Nextlink for Arbitration of Interconnection with BellSouth*, Docket No. 98-00123 (Tenn. Reg. Auth. May 18, 1999)

Texas. Arbitration Award *Proceeding to examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996* Docket No. 21982 July 14, 2000.

Utah. Order "Complaint Against US West Communications Inc. By Nextlink Inc. Requesting Utah Public Service Commission to Enforce an Interconnection Agreement Docket No. 99-049-44 (October 28, 1999)

Washington. Arbitrator's Report and Decision, *In the Matter of Petition for Arbitration of an Interconnection Agreement Between Electric Lightwave and GTE Northwest*, Docket No. UT-980370 (Wash. Util. And Trans. Comm'n March 22, 1999)

Washington. Third Supplemental Order Granting WorldCom's Complaint, *WorldCom v. GTE Northwest*, Docket No. UT-98-338 (Wash. Util. And Trans. Comm'n May 12, 1999)

Wisconsin. *Complaint of MCImetro Access Transmission Services, Inc., 15-TD-100 to Compel Payment of Reciprocal Compensation from 6720-TD-102 Wisconsin Bell, Inc. d.b.a Ameritech Wisconsin, for Traffic Terminated to Internet Service Providers.* (Order for Dockets 15-TD-100 and 6720-TD-102 January 19, 2000)

DOCKET 27069
APPENDIX B

Massachusetts. *Complaint of MCI WorldCom Against New England Telephone and Telegraph for Breach of Interconnection Terms*, D.T.E. 97-116-C (Mass. Dept. of Telecommunications and Energy May 19, 1999)

Missouri. Order Denying Application for Rehearing, *In the Matter of Petition of Birch Telecom for Arbitration with Southwestern Bell*, Case No. TO-98-278 (Mo. Pub. Serv. Comm'n Mar. 9, 1999)

Missouri. Order Clarifying Arbitration Order, *In the Matter of Petition of Birch Telecom for Arbitration with Southwestern Bell*, Case No. TO-98-278 (Mo. Pub. Serv. Comm'n April 16, 1999)

West Virginia. Commission Order, *Spring Petition for Declaratory Ruling*, Case No. 99-0166-T-PC (W.V. Pub. Serv. Comm'n May 7, 1999)

DOCKET 27069
APPENDIX C

Illinois Bell Tel. Co. v. Worldcom Tech., Inc., 179 F.3d 566, No. 98-3150 (7th Cir. June 18, 1999)

BellSouth Telecomm. V. ITC DeltaCom Comm. No. 99-D-287-N, 99-D-747-N (M.D. Ala. August 18, 1999) (Upon the Motion of BellSouth to Alter or Amend the Court's Aug. 18, 1999 Order of Dismissal, this matter has subsequently been briefed on the merits and is awaiting further action by the Court.)

Michigan Bell Telephone Co. v. MFS Intelenet of Michigan, Inc., No. 5:98 CV 18, (W.D. Mich. August 4, 1999) (*affirming* Michigan PSC Order, January 28, 1998)

U.S. West Communications, Inc. v. Worldcom Technologies, Inc., No. 97-857-JE (D. Or. Mar. 24, 1999)

Southwestern Bell Telephone Co. v. Public Utility Commission of Texas, et al." Case No. 98-50787. In the U.S. Court of Appeals of the Fifth Circuit (March 30, 2000).

COMMISSIONERS:

BOB DURDEN, CHAIRMAN
ROBERT B. (BOBBY) BAKER, JR.
DAVID L. BURGESS
LAUREN "BUBBA" McDONALD, JR.
STAN WISE



DOCKET # 10854
DOCUMENT # 41129

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AUG 30 2000

DOCKET NO. 10854-U

EXECUTIVE SECRETARY
G.P.S.C.

In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc. Pursuant to the Telecommunications
Act of 1996.

**ORDER DENYING MOTION FOR CLARIFICATION
AND RECONSIDERATION**

BY THE COMMISSION:

On June 11, 1999, ITC^DeltaCom Group, Inc., d/b/a ITC^DeltaCom ("DeltaCom") petitioned the Commission to arbitrate certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc. ("BellSouth"). On July 5, 2000, the Commission issued an Order in this docket.

On July 17, 2000, BellSouth filed a Motion for Clarification and Reconsideration. BellSouth raised four grounds in its Motion. The first ground BellSouth raises is that payment of reciprocal compensation should be subject to a retroactive true-up. The Commission disagrees.

The Commission's Order states that "[c]onsistent with previous decisions of the Commission, the Commission requires BellSouth to pay reciprocal compensation for calls to ISPs." (Order, p.7). In its Motion, BellSouth appears to assert that in order to be consistent with its order in Docket No. 10767-U, Petition by ICG Telecom Group, Inc. for Arbitration of Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, the Commission would have to order a true-up mechanism in this docket as well.

In Docket 10767-U, the Commission referenced the FCC's February 26, 1999 Declaratory Ruling, in CC Docket 96-98 ("Declaratory Ruling") in support of the need for a true-up mechanism. However, on March 24, 2000, the District of Columbia Circuit Court of Appeals vacated the FCC's Declaratory Ruling for "want of reasoned decision-making with regard to the FCC's use of "end-to-end" analysis." Bell Atlantic Tel. Co. v. FCC, 206 F.3d 1, 200 US App. Lexis 4685 (D.C. Cir. March 24, 2000). Accordingly, it is consistent with its prior decisions for

the Commission to decline the ordering of a true-up mechanism in this docket. BellSouth's motion for reconsideration and clarification on this ground is denied.

In its second ground, BellSouth argues that the Commission erred in ordering it to pay reciprocal compensation to DeltaCom at the tandem interconnection rate. The Commission denies this ground on the basis that DeltaCom met its burden to demonstrate its switch serves a comparable geographic area as BellSouth's switch and performs the same function as BellSouth's switch.

In its third ground, BellSouth asks the Commission to reconsider its decision on the provisioning interval for cageless collocation. BellSouth requested an interval of ninety business days; whereas DeltaCom argued that an interval of 30 calendar days is appropriate. The Commission rejected both of these proposals and ordered an interval of 60 calendar days, and allowed for 90 calendar days for extraordinary circumstances. The intervals ordered by other states undermine any argument that the interval ordered by the Commission is not sufficient. The Commission denies this ground for reconsideration because the evidence reflects that the Commission-ordered interval is appropriate.

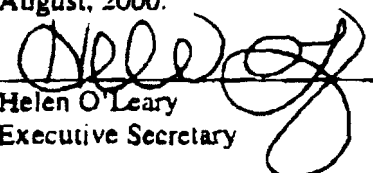
In its final ground, BellSouth requests that the Commission reconsider its decision to require BellSouth to provide CLECs with all combinations of UNEs that are ordinarily combined in BellSouth's network. The Commission's decision on this issue is consistent with its order in Docket No. 10692-U, Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements. BellSouth did not raise any arguments that would compel reconsideration of the Commission's decision; therefore the Commission denies BellSouth's Motion on this ground as well.

WHEREFORE IT IS ORDERED, that BellSouth's Motion is denied.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 15th day of August, 2000.


Helen O'Leary
Executive Secretary


Bob Durden
Chairman

08/30/00
Date

08/28/00
Date

COMMISSIONERS:

BOB DURDEN, CHAIRMAN
 ROBERT B. BAKER, JR.
 DAVID L. BURGESS
 LAUREN "BUBBA" McDONALD, JR.
 STAN WISE



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DOCKET# 10854
 DOCUMENT# 39794

Docket No. 10854-U

In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth
 Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

ORDER

Appearances

On behalf of ITC^DeltaCom Communications, Inc.
 David I. Adelman, Attorney
 Charles B. Jones, Attorney

On behalf of BellSouth Telecommunications, Inc.
 Fred McCallum, Attorney
 Thomas B. Alexander, Attorney

On behalf of the Commission Staff
 Daniel Walsh, Attorney

BY THE COMMISSION:

On June 11, 1999, ITC^DeltaCom Group, Inc., d/b/a ITC^DeltaCom ("ITC^DeltaCom") petitioned the Commission to arbitrate certain unresolved issues in the interconnection negotiations between ITC^DeltaCom and BellSouth.

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved the previous interconnection agreement between the parties for the two-year period beginning March 12, 1997. On November 12, 1999, the Commission issued its Procedural and Scheduling Order in this matter. Hearings were held before the Commission on November 29 and 30 and December 8, 1999.

Order
 Docket 10854-U
 Page 1 of 13

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EXECUTIVE SECRETARY
 G.P.S.C.

On December 30, 1999, the parties filed briefs on the following unresolved issues:

1. Should BellSouth be required to comply with the performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNEs"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to DeltaCom's Petition?
2. Should BellSouth be required to provide services including Operational Support Systems and UNEs at parity with that which it provides itself?
3. Should BellSouth be required to provide an unbundled loop using IDLC technology which will allow ITC^DeltaCom to provide consumers the same quality of service as that offered by BellSouth to its consumers?
4. Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?
5. Should BellSouth be required to provide to DeltaCom extended loops or the loop/port combination? If so, what should the rates be?
6. Should BellSouth be required to pay reciprocal compensation to DeltaCom for all calls that are properly routed over local trunks, including calls to Information Service Providers ("ISPs")? What should be the rate for reciprocal compensation?
7. Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a complete application is filed?
8. Should the Parties continue operating under existing local interconnection arrangements?
9. What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?
10. What are the appropriate recurring and non-recurring rates and charges for BellSouth ADSL/HDSL and two-wire and four-wire ADSL/HDSL compatible loops, Two-wire SL2 loops, Two-wire SL1 loops, Two-wire SL2 loop Order Coordination for Specified Conversion Time?
11. Should BellSouth be permitted to charge DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?
12. What should be the appropriate rate for cageless and shared collocation in light of the recent FCC Advanced Services Order?
13. Which party should be required to pay for the Percent Local Usage (PLU) and the Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?
14. Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement should be required to pay the costs of such litigation?

15. Should the language covering tax liability be included in the interconnection agreement, and, if so, whether that language should simply state that each Party is responsible for its tax liability?

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

1. Should BellSouth be required to comply with the performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNEs"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to DeltaCom's Petition?

In its June 11, 1999 Petition, DeltaCom requested that BellSouth be held to performance measures and guarantees for the criteria listed in Issue 1(a) of the Petition. The parties disagreed on two main issues concerning performance measures and guarantees. First, whether the Commission has the authority to order performance measures and guarantees, and second, whether such a provision is necessary. DeltaCom filed proposed Enforcement Mechanisms with the Commission. On February 3, 2000, BellSouth filed service quality measures.

BellSouth argued that the performance guarantees requested by DeltaCom "are in the nature of penalties or damages." (BellSouth Post-Hearing Brief p. 2). BellSouth cites Georgia Public Service Commission v. Atlanta Gas Light Company, 205 Ga. 863, 55 S.E.2d 618 (1949), for the proposition that the Commission does not have the authority to award compensatory damages. DeltaCom argues that the Commission not only has the authority to order performance measures and guarantees, but an obligation pursuant to the Federal Act. Addressing performance guarantees falls under the Commission's charge under Section 252(b)(4)(C) of the Federal Act to "resolve each issue."

In Docket No. 10767-U, the Commission distinguished the inclusion of performance guarantees in interconnection agreements from the award of compensatory damages. Ordering a refund to customers after a utility charged a rate approved by the Commission, as was the case in Atlanta Gas Light Company, is retroactive. Including performance guarantees in an interconnection agreement is not retroactive. Nor does the mere inclusion of enforcement guarantees constitute compensatory damages. It is only providing an incentive for BellSouth to meet the performance standards in the agreement.

Moreover, the Commission is specifically authorized to set and enforce terms and conditions of interconnection and unbundling. O.C.G.A. § 46-5-164. Therefore, the Commission concludes that it has the authority to order enforcement measures as part of an interconnection agreement.

The Commission finds that it is appropriate to defer this issue for prompt resolution in a generic proceeding. Performance measures and guarantees are not only at issue in this arbitration, they are at issue in several other arbitrations currently pending before this Commission and are of general interest to virtually all CLECs. This Commission has in the past found it appropriate to determine such common issues in generic proceedings. The Commission finds that this practice not only is a proper way to allocate limited resources and achieve economies, it also helps ensure non-discriminatory terms and conditions for interconnection. Accordingly, the Commission has initiated further proceedings in Docket No. 7892-U. The Commission recognizes the need for prompt resolution of these issues and has instructed the Staff of the Commission to promptly schedule such a proceeding for an expedited resolution.

2. **Should BellSouth be required to provide services including Operational Support Systems ("OSS") and UNEs at parity with that which it provides itself?**

The parties agree that BellSouth is required to provide Operational Support Systems ("OSS") on a non-discriminatory basis to CLECs. The disagreement surrounds what constitutes parity. DeltaCom alleges that BellSouth does not provide OSS at parity (DeltaCom Post-Hearing Brief p. 21). In making this claim, DeltaCom relies upon the evidence that 62% of orders submitted electronically to BellSouth must be manually processed by BellSouth.

BellSouth argues that DeltaCom mischaracterizes the meaning of parity. The orders submitted by DeltaCom that need to be entered manually are complex orders. BellSouth states that these complex orders are designed to fall out for manual handling (BellSouth's Post-Hearing Brief, p. 10, footnote 3). BellSouth's system is not designed to process complex orders electronically whether the orders come from a CLEC or itself.

The Commission finds that parity does not require BellSouth to process complex orders electronically when it enters its own complex service orders manually. DeltaCom should take issues for the further mechanization of complex orders to the Change Control Process. As to DeltaCom's claim that a high percentage of its orders "fall out" and have to be entered manually, BellSouth's performance in processing DeltaCom's orders shall be subject to the standards that the Commission intends to set in Docket No. 7892-U as discussed above.

The issue of whether BellSouth is required to provide UNEs at parity with that which it provides itself has already been decided in the context of other proceedings. BellSouth is obligated to provide UNEs to DeltaCom under the rates, terms and conditions set forth in the Commission's order in Docket No. 7061-U, Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services, and Docket No. 10692-U, Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements.

3. **Should BellSouth be required to provide an unbundled loop using IDLC technology which will allow ITC^DeltaCom to provide consumers the same quality of service as that offered by BellSouth to its consumers?**

In its Petition, DeltaCom asserts that IDLC technology is required to allow it to provide the same quality of service to its customers as BellSouth provides to its customers. The alternatives, long copper loops or UDLIC technology, are alleged to result in inferior service. DeltaCom claims that it will be competitively disadvantaged by BellSouth's practice of converting DeltaCom customers to these lesser technologies. In its Post-Hearing Brief, DeltaCom argues that BellSouth must provide IDLC equivalency to DeltaCom customers in order to avoid discrimination.

BellSouth counters that when a CLEC "wants to serve an end-user customer using its own switch and that end-user customer is currently served by BellSouth over IDLC equipment, the customer's loop can no longer be 'integrated' with the BellSouth switch. Thus BellSouth must 'disintegrate' a loop served by IDLC so that DeltaCom can connect the loop to its switch." BellSouth's Post-Hearing Brief, pp. 12-13. BellSouth states that there are six technically feasible methods to unbundle an IDLC-delivered loop, including the "side-door" arrangement favored by DeltaCom and the UDLIC method that BellSouth apparently generally employs. *Id.* at 13; DeltaCom's Post-Hearing Brief, p. 25, footnote 29.

Section 251(c)(3) of the Federal Act requires BellSouth to provide nondiscriminatory access to network elements. For BellSouth to deny a CLEC's customers the same quality of service that it provides to its own customers that are located in the same area violates the prohibition on discrimination. Therefore, in those areas in which BellSouth is providing the IDLC technology to its own customers, BellSouth must provide IDLC technology to DeltaCom's customers as well. This includes a requirement that BellSouth provide the "side-door" arrangement to DeltaCom where such arrangement is technically feasible.

4. **Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC-DeltaCom under the interconnection agreement previously approved by this Commission?**

DeltaCom asks that BellSouth continue providing those UNEs and combinations that it is currently providing under the existing interconnection agreement. BellSouth argues that this issue will be rendered moot by the Commission's order in this proceeding.

The Commission addressed the issue of UNE prices and provisioning in Docket No. 7061-U. Since the time the briefs were written in this proceeding, the Commission has also addressed the issue of pricing and provisioning of UNE combinations in Docket No. 10692-U. No evidence was presented that would justify departing in any manner from the Commission's orders in those dockets. Therefore, BellSouth is required to provide UNEs and UNE combinations pursuant to the Commission's orders in those dockets. The parties should continue under their existing agreement until the new agreement is executed.

5. **Should BellSouth be required to provide to DeltaCom extended loops or the loop/port combination? If so, what should the rates be?**

Since the time the briefs were written in this proceeding, the Commission has addressed the issue of pricing and provisioning of UNE combinations in Docket No. 10692-U. The EEL is a UNE combination consisting of a loop, transport and a cross-connect. Like the FCC, the Commission has declined to define the EEL itself as a UNE. Third Report and Order, ¶ 478, Docket 10692-U. However, as discussed below, CLECs can obtain at UNE rates combinations of UNEs that BellSouth ordinarily combines in its network.

FCC Rule 315 addressed combinations of unbundled network elements. Rule 315(b) provides:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

(Emphasis added). BellSouth has interpreted the term "currently combines" as "currently combined." That is, BellSouth takes the position that it does not have any obligation to provide to CLECs at UNE rates combinations of UNEs that it ordinarily combines in its network. BellSouth's Post-Hearing Brief, p. 20.

When the Supreme Court reinstated Rule 315(b), it stated its understanding of the intent of the rule:

The reality is that §251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in §251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

Iowa Board

The Commission addressed this issue in the context of Docket 10692-U and 10767-U. The Commission's Order in 10692-U included the following language:

Rule 315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.' In the FCC's First Report and Order, the FCC stated that the proper reading of 'currently combines' is 'ordinarily combined within their network, in the manner which they are typically combined.' First Report and Order, ¶ 296. In its Third Report and Order, the FCC stated that it was declining to address this argument at this time because the matter is currently pending before the Eighth Circuit. Third Report and Order, ¶ 479.¹ Accordingly, the only FCC interpretation of 'currently combines' remains the literal one contained in the First Report and Order. The Commission finds that 'currently combines' means ordinarily combined within the BellSouth's network, in the manner which they are typically combined. Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. However, in the event that the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision on this issue.

As further explained by the Commission in Docket No. 10692-U, adopting BellSouth's proposed "currently combined" interpretation would only make the process more cumbersome for the CLEC; it would not prevent the CLEC from obtaining and using the same UNE combinations. Based on the FCC's Third Report and Order, CLECs can purchase services such as special access and resale even when the network elements supporting the underlying service are not physically connected at the time the service is ordered. At the point when the CLEC begins to receive such service, the underlying network elements are necessarily physically connected. The CLECs can then obtain such currently combined network elements as UNE combinations at UNE prices. Third Report and Order, ¶¶ 480, 486. The Commission finds that even assuming *arguendo* that "currently combines" means "currently combined," rather than go through the circuitous process of requiring the CLEC to submit two orders (e.g., one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allow CLECs to place only one order for the UNE combination.

To the extent that DeltaCom seeks to obtain other combinations of UNEs that BellSouth ordinarily combines in its network, which have not been specifically priced by this Commission when purchased in combined form, the Commission finds that DeltaCom can purchase such UNE combinations at the sum of the stand-alone prices of the UNEs which make up the combination. If DeltaCom is dissatisfied with using the sum of the stand-alone rates, it is free to pursue the bona fide request process with BellSouth to seek a different rate. DeltaCom may purchase EELs from BellSouth at the rates and subject to the conditions established in the Commission's Docket No. 10692-U.

6. **Should BellSouth be required to pay reciprocal compensation to DeltaCom for all calls that are properly routed over local trunks, including calls to Information Service Providers ("ISPs")? What should be the rate for reciprocal compensation?**

BellSouth urges the Commission to deny DeltaCom's request to require the payment of reciprocal compensation for ISP-bound traffic because it maintains that calls to ISPs are not local. (BellSouth Post-Hearing

¹ While the FCC declined to address this argument again in its Third Report and Order, significantly the FCC did not disavow the position it took in the First Report and Order. BellSouth argues that "the FCC made clear that 'currently combined' elements are those elements physically combined as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes basis.'" BellSouth's Brief on Impact of Third Report and Order, p. 5. The FCC, however, was not stating that Rule 51-315(b) is limited only to currently combined elements. Instead, the FCC was stating that since, at the least, Rule 51-315(b) includes currently combined elements, and since when a CLEC purchases special access the elements are currently combined, that even under the more restrictive "currently combined" interpretation, CLECs would be able to convert special access to loop-transport combinations at UNE rates. Third Report and Order ¶ 480.

Brief, p. 22). BellSouth further asserts that if the Commission wishes to select a compensation mechanism for ISP traffic, reciprocal compensation is not the appropriate mechanism. It proposes instead either (1) bill and keep; (2) tracking and holding any compensation in abeyance pending the establishment of an inter-carrier compensation mechanism by the FCC; or (3) the establishment of a compensation arrangement similar to that which exists for other access traffic. (BellSouth Post-Hearing Brief p. 23). DeltaCom's arguments focus on which party is the cost causer and which party incurs the costs. DeltaCom reasons that since a BellSouth customer who uses DeltaCom's system to complete a call imposes costs on DeltaCom that it is entitled to compensation.

The Commission finds that it has the authority under Section 252 of the Federal Act to order a provision in the arbitration agreement that reciprocal compensation be due for ISP-bound traffic. *see Declaratory Ruling*² Paragraph 25 (State commissions "may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.").³ As the FCC has stated, the FCC's own policy of "treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation suggest that such compensation is due for that traffic." *Id.* ILECs and CLECs should be compensated for costs imposed on their systems, including costs for transport and delivery of ISP-bound calls. The Commission finds that these costs should be compensated based on the rates established in Docket No. 7061-U. Consistent with the previous decisions of the Commission, the Commission requires BellSouth to pay reciprocal compensation for calls to ISPs.

In this case, such payments shall include the tandem-switching rate. FCC Rule 51.711(a)(3) states that "[w]here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate of the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." The Commission finds that DeltaCom has demonstrated that it meets this rule and that it provides tandem switch functions. Accordingly, the Commission finds that DeltaCom is entitled to the tandem-switching rate.

The existing interconnection agreement between the parties approved by the Commission includes the reciprocal compensation rate of \$.009. DeltaCom initially proposed that this rate be carried forward into the new agreement. However, DeltaCom stated that it would accept an interim rate of \$.0045. BellSouth advocates adopting the \$.002 rate established by the Commission in Docket No. 7061-U as just and reasonable for reciprocal compensation. In stating its position, DeltaCom uses the rate in the existing agreement as the benchmark. However,

² Since this hearing was held, the FCC's Declaratory Ruling has been vacated by the District of Columbia Circuit Court of Appeals for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis. Bell Atlantic Tel. Co. v. FCC, -- F.3d --, No. 99-1094, 2000 WL 273383, at *2 (D.C. Cir. Mar. 24, 2000). The District of Columbia Circuit's order removed the clarity that the Declaratory Ruling had appeared to provide regarding the jurisdictional nature of ISP traffic. Thus, at least for the time being, the jurisdictional nature of ISP traffic is once again an open question and this Commission once again finds that such traffic is intrastate in nature. Indeed, the Bell Atlantic decision makes the same distinctions between providers of telecommunication services and information services that this Commission had previously relied on in its prior ISP cases. Bell Atlantic Tel. Co. v. FCC, 2000 WL 273383, at *6-7. In any event, as discussed in footnote 3, *supra*, even assuming *arguendo* that such traffic is interstate in nature, the Commission is still authorized to address this matter and would still find that reciprocal compensation is due for such traffic.

³ As the District Court for the Northern District of Georgia noted when it affirmed the prior ISP orders issued by this Commission, "the FCC unambiguously stated [in the Declaratory Ruling] that '[a] state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding - or a subsequent state commission decision that those obligations encompass ISP-bound traffic - does not conflict with any Commission rule regarding ISP-bound traffic.'" BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., et al., In the United States District Court for the Northern District of Georgia, Civil Action No. 1:99-CV-0248-JOF, May 4, 2000 Order, p. 27. The fact that the Declaratory Ruling was vacated for want of reasoned decision-making with regard to its use of the "end-to-end" analysis does not necessarily mean that the FCC's conclusion that state commission's are authorized to require payment of reciprocal compensation for ISP traffic even if such traffic is interstate in nature is invalid. *Id.* at n. 13.

the reciprocal compensation rate in the existing agreement between the parties was the product of negotiation. Under 47 U.S.C. § 252(e)(2), the Commission may only reject an agreement adopted by negotiation upon a finding that the implementation of such agreement "is not consistent with the public interest, convenience, and necessity."

DeltaCom states that because the Commission did not reject the \$.009 rate, this rate is in the public interest. But implicit in DeltaCom's partial concession to a \$.0045 rate is the flexibility involved in determining whether a rate is "not consistent with the public interest." A range of rates may fall within this category. Therefore, Commission approval of the \$.009 rate was not an endorsement of that particular rate. The test for determining appropriate rates in an arbitration proceeding is more structured. Accordingly, in determining the appropriate reciprocal compensation rate for an ongoing basis, it is prudent to look to what has already been found to be a reasonable rate and found to comply with the pricing standards of the 1996 Act.

DeltaCom has not provided adequate support for incorporating a rate other than what the Commission already determined to be reasonable in Docket No. 7061-U. Therefore, the Commission concludes that the appropriate rate for reciprocal compensation is \$.002.

7. **Should BellSouth provide cageless collocation to DeltaCom 30 days after a complete application is filed?**

In its March 31, 1999 Advanced Wire Services Order, the FCC required ILECs to make available to CLECs cageless collocation arrangements. While the FCC did not adopt provisioning intervals in its order, it did emphasize the need for timely provisioning. The FCC cited the competitive harm that a new entrant suffers when collocation arrangements are unnecessarily delayed.

The proposals made by DeltaCom and BellSouth for provisioning intervals were poles apart. DeltaCom's proposal would allow BellSouth only 30 calendar days after a firm order confirmation ("FOC") to provide cageless collocation. In contrast, BellSouth requested that it be allowed 90 calendar days for "ordinary circumstances" or 130 calendar days for "extraordinary circumstances."

DeltaCom apparently bases its recommendation on the precedent set in other jurisdictions. Its Post-Hearing Brief details intervals set by the Texas Public Utility Commission, the Utah Commission and the Louisiana Public Service Commission as well as the recommendation of the Virginia Corporation Commission Staff. However, none of the intervals set or recommended in the states that DeltaCom cited are as brief as the interval recommended by DeltaCom in this proceeding.

DeltaCom claims that BellSouth's violation of the FCC's March 1999 order in *In re: Deployment of Wireline Services Offering Advanced Telecommunications Capability* resulted in longer than necessary intervals to provide cageless collocation. Tr. 419. DeltaCom witness Don Wood testified that the FCC order gave BellSouth a "proactive requirement for space assessment" in order to avoid delay related to compiling space availability information after a collocation request has been made. Tr. 482.

In *GTE Service Corporation et al. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), the Court vacated paragraph 42 of the FCC's March 1999 order, which stated that ILECs

must give competitors the option of collocating equipment in any unused space within the incumbent's premises, to the extent technically feasible, and may not require competitors to collocate in a room or isolated space separate from the incumbent's own equipment.

This appears to be the language that DeltaCom claimed BellSouth had been violating. The Court's decision therefore undermines the premise of DeltaCom's argument for a 30 day interval.

BellSouth commits to provisioning cageless collocation as soon as possible, but still takes the position that a 90 business day interval is appropriate. BellSouth's does not offer adequate support for why a 90 business day

interval is necessary. In fact, the decisions by other state commissions indicate that a significantly shorter period is practical. Therefore, the Commission rejects BellSouth's proposed interval.

The Commission finds that an interval of 60 calendar days is reasonable. A 60 calendar day interval between the time the firm order confirmation is placed and the cageless collocation is provided is sensitive to the potential competitive harm to DeltaCom from an unnecessary delay in the provisioning of cageless collocation as well as being consistent with the decisions of other state commissions that have addressed this issue. The Commission also finds that it is reasonable to allow BellSouth additional time in extraordinary circumstances. Therefore, in extraordinary circumstances, BellSouth will be obligated to provision cageless collocation to DeltaCom in 90 calendar days.

8. Should the Parties continue operating under existing local interconnection arrangements?

In Exhibit B of its June 11, 1999 Petition, DeltaCom noticed several Local Interconnection issues pertaining to provisions in its existing agreement with BellSouth. BellSouth maintains that it is inconsistent to petition for arbitration of a new agreement while asking for the inclusion of terms and conditions from a previous agreement. Moreover, BellSouth disputes the notice provided by DeltaCom because it states DeltaCom failed to identify the specific provisions of the expired agreement it seeks to continue.

The Commission does not see any inconsistency in asking for the inclusion of provisions from a previous agreement. Also, DeltaCom's Petition sets forth clearly the provisions it seeks to continue. The language in the existing agreement on cross connect fees, reconfiguration charges, network redesigns, and NXX translations shall be continued in the new agreement. The definitions of the terms "local traffic" and "trunking options" shall remain the same as in the existing agreement. The language in the existing agreement on routing DeltaCom's traffic shall also continue in the new agreement.

9. What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom charges for BellSouth's OSS?

DeltaCom argues that allowing BellSouth to charge for its OSS would allow it to capitalize on a monopoly position. CLECs have to bear their costs during a transition to competition so ILECs should have to bear theirs as well. And OSS, DeltaCom argues, is a transition cost. (DeltaCom Post-Hearing Brief pp 41-42). BellSouth counters that it is not required to subsidize a CLEC's access to its OSS.

The Commission has addressed this issue in Docket No. 7061-U. The Commission finds that BellSouth shall be permitted to impose charges for OSS on DeltaCom consistent with the Commission's order in Docket No. 7061-U.

10. What are the appropriate recurring and non-recurring rates and charges for BellSouth ADSL/HDSL and two-wire and four wire ADSL/HDSL, Two-wire SL2, Two-wire SL1, Two-wire SL2 Order Coordination for Specified Conversion Time, Extended Loops and Loop-Port Combinations services?

DeltaCom requests that the Commission determine the recurring and non-recurring rates for the UNEs and UNE combinations stated in this issue. By pointing out alleged flaws in BellSouth's cost model, DeltaCom requests rates for UNEs that differ from those approved by the Commission in Docket No. 7061-U. Also, DeltaCom requests that the Commission set rates for UNE combinations that are no higher than those adopted by the Commission in Docket No. 10692-U. (DeltaCom Post-Hearing Brief, p. 44).

BellSouth defends its cost model and argues that the Commission should not re-litigate Docket No. 7061-U. The Commission agrees that neither Docket No. 7061-U nor Docket No. 10692-U should be re-litigated in the context of an arbitration between BellSouth and an individual CLEC. To do so would be to undermine the purpose behind generic dockets and would place the individual CLEC at either an unfair advantage or disadvantage. The

Commission concludes that the rates for UNEs shall be consistent with the Commission's order in Docket No. 7061-U. The rates for extended loops and other UNE combinations should be the same as those ordered by the Commission in Docket No. 10692-U.

11. Should BellSouth be permitted to charge DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

DeltaCom's position is that BellSouth does not incur disconnect costs if no physical disruption takes place. From this premise, DeltaCom argues that BellSouth should not be entitled to assess disconnection charges when no physical disconnection takes place. (DeltaCom Post-Hearing Brief, p. 44). DeltaCom also argues that allowing BellSouth to charge both a disconnect fee to the initial carrier and a reconnect fee to the new carrier results in a double-recovery for BellSouth. (DeltaCom Post-Hearing Brief, p. 45). BellSouth maintains that it incurs costs related to disconnection even in those instances in which physical disruption does not take place. BellSouth also asserts that in some cases it incurs separate costs for disconnection and reconnection. (BellSouth Post-Hearing Brief, p. 49).

The Commission has addressed the disconnection issue in the context of Docket No. 7061-U. In Docket No. 7061-U, the Commission determined that BellSouth should not be allowed to impose disconnect charges if physical disconnection does not occur. Also, in that proceeding, the Commission found that most disconnections involve customers switching providers or another customer taking the place of the old customer. Therefore, allowing BellSouth to charge for disconnection which occurs at the time of the new connection for the new CLEC or new customer would result in a double recovery. The Commission also found that in many instances, de-activation of services at the end user's location does not require physical disruption of the facility. Accordingly, the Commission finds that BellSouth shall not be allowed to impose disconnect charges if physical disconnection does not occur or when BellSouth does not incur any costs associated with such disconnection.

12. What should be the appropriate rate for cageless/shared collocation in light of the recent FCC Advanced Services Order?

DeltaCom argues that the rate for cageless and shared collocation should be based on BellSouth's rates for virtual collocation with adjustments to remove charges for installation maintenance and repair and training. (DeltaCom Post-Hearing Brief p. 45). DeltaCom states that since it will perform these functions and incur the related costs, allowing BellSouth to recover these charges in its cageless collocation rate would overstate BellSouth's costs.

BellSouth responds that DeltaCom begins its analysis from the incorrect premise that space preparation is not necessary for cageless collocation. While acknowledging that on occasion space preparation is not required, BellSouth maintains that many situations require space preparation. BellSouth suggested that the Commission adopt the interim rate it proposed for a Keyless Security Access System in order to comply with the FCC's Advanced Services order.

The Commission established the rate for physical collocation in Docket No. 7061-U. The issue then becomes the differences in the costs incurred by BellSouth related to cageless and shared collocation as compared to caged physical collocation. BellSouth and DeltaCom presented conflicting evidence on the preparation required for cageless collocation. The Commission finds that the appropriate rate for cageless collocation is the rate for physical collocation, as established by the Commission in Docket No. 7061-U, unless there is no requirement to construct an enclosure. If BellSouth is not required to construct an enclosure, then the cost of doing so should be removed from the physical collocation charge.

13. Which party should be required to pay for the Percent Local Usage (PLU) and the Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?

The parties agreed that it is reasonable for either party to request an audit of PLU and PIU reports. Both parties even agree that the party requesting the audit should pay for it when the audit results show reasonably accurate reporting of PLU/PIU percentages. The parties differ when it comes to who bears responsibility for paying for the audit when the audit demonstrates that either party was found to have overstated the PLU/PIU by 20 percentage points or more.

BellSouth argues that a party should be held responsible for overstating usage. Under BellSouth's proposal, the party who inaccurately stated usage is responsible for paying for the costs of the audit, regardless of which party requested the audit. DeltaCom states that such a position is inconsistent with principles of cost causation. DeltaCom supports always assigning the cost of the audit to whichever party requested it.

The Commission finds that BellSouth's position is reasonable. A party that substantially overstates PLU/PIU should bear the responsibility for the costs of the audit that revealed the inaccuracy. The appropriate incentive is for parties to accurately state usage, not to discourage reasonable and necessary requests for audits.

14. Whether the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement should be required to pay the costs of such litigation?

DeltaCom proposes that the losing party to an enforcement proceeding for breach of the interconnection agreement should be required to pay the costs of such litigation. BellSouth argues that such a provision would be the equivalent of compensatory damages, which it argues is outside the scope of Commission authority.

The Commission finds that a provision holding the losing party responsible for the costs of litigation is unnecessary and cumbersome and therefore declines to incorporate such a provision into the interconnection agreement. Also, it is seldom the case that resolution of a complaint identifies a clear winner or loser. It is not necessary at this time to reach the issue of whether the Commission has the authority to incorporate such a provision into an interconnection agreement.

15. Should the language covering tax liability be included in the interconnection agreement, and, if so, whether that language should simply state that each Party is responsible for its tax liability?

The current interconnection agreement between BellSouth and DeltaCom does not include language covering tax liability. BellSouth did not present adequate evidence to demonstrate why this language is necessary. The Commission finds that the interconnection agreement should not include a provision covering tax liability.

III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that the Commission defers the issue of performance measures and guarantees for prompt resolution in a generic proceeding. When that proceeding is complete, the performance measures and guarantees adopted therein shall be incorporated into the parties' interconnection agreement.

ORDERED FURTHER, that BellSouth must provide non-discriminatory access for CLEC orders; however, this does not require BellSouth to process DeltaCom's complex service orders electronically when it enters its own complex service orders manually.

ORDERED FURTHER, that in those areas in which BellSouth is providing the IDLC technology to its own customers, BellSouth must provide IDLC technology to DeltaCom's customers as well.

ORDERED FURTHER, BellSouth is required to provide UNEs and UNE combinations pursuant to the Commission's orders in Docket Nos. 7061-U and 10692-U respectively. Parties shall continue to operate under the existing agreement until the new agreement is executed. The rates for UNEs shall be consistent with the Commission's order in Docket No. 7061-U, and the rates for extended loops and other UNE combinations should be the same as those ordered by the Commission in Docket No. 10692-U.

ORDERED FURTHER, BellSouth is required to pay reciprocal compensation for calls to ISPs. Such payments shall include the tandem-switching rate. The rates, terms and conditions shall be pursuant to the Commission's Order in Docket No. 7061-U.

ORDERED FURTHER, BellSouth shall provide cageless collocation to DeltaCom within 60 calendar days after a complete application is filed. In extraordinary circumstances, BellSouth will be obligated to provision cageless collocation to DeltaCom within 90 calendar days.

ORDERED FURTHER, that the language in the existing agreement on cross connect fees, reconfiguration charges, network redesigns, and NXX Translations should be continued in the new agreement. Also, the definitions of the terms "local traffic" and "trunking options" should remain the same as in the existing agreement. The language in the existing agreement on routing DeltaCom's traffic should continue in the new agreement.

ORDERED FURTHER, BellSouth shall be permitted to impose charges for OSS on DeltaCom consistent with the Commission's order in Docket No. 7061-U.

ORDERED FURTHER, that BellSouth shall not be allowed to impose disconnect charges if a physical disconnect does not occur.

ORDERED FURTHER, that the appropriate rate for cageless and shared collocation is the rate for physical collocation, as established by the Commission in Docket No. 7061-U, unless there is no requirement to construct an enclosure, in which case, the cost of doing so should be removed from the charge.

ORDERED FURTHER, that a party that substantially overstates PLU/PIU (20% or more) should bear the responsibility for the costs of the audit that revealed the inaccuracy.

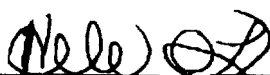
ORDERED FURTHER, the new agreement shall not include a "loser pays" provision.


ORDERED FURTHER, the new agreement shall not include language covering tax liability.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6th day of June, 2000.


Helen O'Leary
Executive Secretary


Bob Durden
Chairman

06/29/00
Date

06/29/00
Date

MEMORANDUM

**TO: ALL COMMISSIONERS
B.B. KNOWLES
LEON BOWLES**

FROM: GILBERT BENTLEY *GB*

DATE: May 31, 2000

IN RE: D-10854-U; ITC DeltaCom/BST Arbitration

Attached is the Staff Recommendation on the remaining issues in the above referenced docket for your review.

If you need additional information please let me know.

DOCKET NO. 10854-U**STAFF RECOMMENDATION SUMMARY****Issue 1(a)**

Should BellSouth be required to comply with the performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNE's"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A of this Petition?

Staff recommends adoption on an interim basis the Service Quality Measures ("SQMs") filed by BellSouth and the Enforcement Mechanisms filed by DeltaCom. The parties are directed to meet and jointly report back to the Commission in 30 days on the following:

- a) In those instances where SQMs do not have a benchmark/analogue, parties shall prepare a final proposal.
- b) For the Enforcement Mechanisms, parties shall prepare a matrix which shows what SQMs are attached to each tier of enforcement. Additionally, precisely state what the penalties are and what and how each party is affected for each tier of enforcement.

These interim SQMs and Enforcement Mechanisms shall remain in place until the Commission determines permanent SQMs in Docket 7892-U.

Issue 2

Pursuant to the definition of parity agreed to by the parties, should BellSouth be required to provide the following and, if so, under what conditions and what rates (1) Operational Support Systems ("OSS") and (2) UNEs?

BellSouth must provide non-discriminatory access for CLEC orders. BellSouth is not required to process DeltaCom's complex service orders electronically when it enters its own complex service orders manually. DeltaCom should take issues for further mechanization of complex orders to the Change Control Process.

BellSouth is obligated to provide UNEs to DeltaCom under the rates, terms and conditions set forth in the Commission's order in Docket 7061-U and Docket 10692-U.

Issue 2(a)(iv)

Should BellSouth be required to provide an unbundled loop using IDLC technology which will allow ITC^DeltaCom to provide consumers the same quality of service as that offered by BellSouth to its customers?

Section 251(c)(3) of the Federal Act requires BellSouth to provide nondiscriminatory access to network elements. For BellSouth to deny a CLECs customer the same quality of service that it provides to its own customers that are located in the same area violates the prohibition on discrimination. Therefore, in those areas in which BellSouth is providing the IDLC technology to its own customers, BellSouth must provide IDLC technology to ITC^DeltaCom's customers as well.

Issue 2(b)(ii)

Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?

BellSouth is required to provide UNEs & UNE Combinations pursuant to the Commission's orders in Dockets 7061-U and 10692-U respectively. Parties shall continue to operate under the existing agreement until the new agreement is executed.

Issue 2(b)(iii)

Should BellSouth be required to provide to ITC^DeltaCom extended loops or the loop/port combination? If so, what should the rates be?

The EEL is a UNE combination consisting of a loop, transport and a cross-connect. Like the FCC, the Commission has declined to define the EEL itself as a UNE. Third Report and Order, ¶ 478, Docket 10692-U. However, consistent with the Commission order in Docket No. 10692-U, CLECs can obtain at UNE rates combinations of UNEs that BellSouth ordinarily combines in its network including loop/port combinations.

Issue 3

Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Information Service Providers (ISPs)? What should be the rate for reciprocal compensation per minute of use, and how should it be applied?

Consistent with the previous decisions of the Commission finding that calls to ISPs are local calls, the Staff recommends that the Commission require BellSouth to pay reciprocal compensation for calls to ISPs. Such payments shall include the tandem-switching rate. The rates, terms and conditions shall be pursuant to Docket 7061-U.

Issue 4(a)

Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a complete application is filed?

The Commission finds that an interval of 60 calendar days is reasonable. A 60-calendar day interval is sensitive to the potential competitive harm to DeltaCom from an unnecessary delay in the provisioning of cageless collocation as well as being consistent with the decisions of other states commissions that have addressed this issue. The Commission also finds that it is reasonable to allow BellSouth additional time in extraordinary circumstances. Therefore, in extraordinary circumstances, BellSouth will be obligated to provision cageless collocation to DeltaCom in 90 calendar days.

Issue 5

Should the Parties continue operating under existing local interconnection arrangements?

ITC^DeltaCom adequately noticed these issues in Exhibit B of its June 11, 1999 Petition. The language in the existing agreement on cross connect fees, reconfiguration charges, network redesigns, and NXX Translations should be continued in the new agreement. The definitions of the terms "local traffic" and "trunking options" should remain the same as in the existing agreement. The language in the existing agreement on routing ITC^DeltaCom's traffic should continue in the new agreement.

Issue 6(a)

What charges, if any, should BellSouth be permitted to impose on ITC^DeltaCom for BellSouth's OSS?

The Staff recommends that BellSouth be permitted to impose charges for OSS on ITC^DeltaCom consistent with the Commission's Order in Docket No. 7061-U.

Issue 6(b)

What are the appropriate recurring and non-recurring rates and charges for BellSouth two-wire and four-wire ADSL/HDSL compatible loops, Two-wire SL2 loops, Two-wire SL1 loops, Two-wire SL2 loop Order Coordination for Specified Conversion Time?

The rates for UNEs shall be consistent with the Commission's order in Docket No. 7061-U. The rates for extended loops and other UNE combinations should be the same as those ordered by the Commission in Docket No. 10692-U.

Issue 6(c) Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

The Staff recommends that consistent with the Commission's order in Docket No. 7061-U, BellSouth not be allowed to impose disconnect charges if a disconnect does not occur. In Docket No. 7061-U, the Commission found that most disconnections involve customers switching providers or that another customer is taking the place of the old customer, so allowing BellSouth to charge for disconnection which occurs at the time of the new connection for the new CLEC or new customer would result in a double recovery. The Commission also found that in many instances, de-activation of services at the end user's location does not require physical disruption of the facility.

Issue 6(d)

What should be the appropriate rate for cageless and shared collocation in light of the recent FCC Advanced Services Order?

The appropriate rate for cageless and shared collocation is the rate for physical collocation, as established by the Commission in Docket No. 7061-U, unless there is no requirement to construct an enclosure. If BellSouth is not required to construct an enclosure, then the cost of doing so should be removed from the charge.

Issue 7(b)(iv)

Which party should be required to pay for the Percent Local Usage (PLU) and the Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?

A party that substantially overstates PLU/PIU (20% or more) should bear the responsibility for the costs of the audit that revealed the inaccuracy. The appropriate incentive is for parties to accurately state usage, not to discourage reasonable and necessary requests for audits.

Issue 8(b)

Should the losing party to an enforcement proceeding or proceeding for breach of interconnection agreement be required to pay the costs of such litigation?

The Staff recommends that the Commission not include a "loser pays" provision in the agreement. It is not always the case that the resolution of a complaint identifies a clear winner and loser.

Issue 8(e)

Should language covering tax liability be included in the interconnection agreement, and, if so, should that language simply state that each Party is responsible for its tax liability?

The Staff recommends that the Commission not include language in the agreement covering tax liability. BellSouth did not demonstrate the need for such language in the agreement.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 31, 2000

IN RE:

**PETITION FOR ARBITRATION OF ITC^DELTACOM
COMMUNICATIONS, INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
THE TELECOMMUNICATIONS ACT OF 1996**

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**DOCKET NO.
99-00430**

SECOND INTERIM ORDER OF ARBITRATION AWARD

This matter came before the Directors of the Tennessee Regulatory Authority ("the Authority") acting as Arbitrators on August 1, 2000 upon the filing of final best offers by ITC^DeltaCom Communications, Inc. ("DeltaCom") and BellSouth Telecommunications, Inc. ("BellSouth") and the filing of a *Motion for Reconsideration* by BellSouth.

On June 11, 1999, DeltaCom filed a petition requesting the Authority arbitrate the interconnection agreement between it and BellSouth. The Directors accepted DeltaCom's petition for arbitration on June 29, 1999, appointed themselves as Arbitrators, and directed the General Counsel or his designee to serve as the Pre-Arbitration Officer. BellSouth responded to the petition on July 6, 1999. The Authority heard testimony related to the unresolved issues at a three-day hearing held from November 1, 1999 through November 3, 1999. The Arbitrators deliberated at a public meeting on April 4, 2000. The Arbitrators resolved most of the issues, but ordered the parties to submit final best offers on issues 4(a), 5 and 8(e) within thirty (30) days of receipt of the transcript by the Authority and issue 1(a) within forty-five (45) days of receipt of the transcript by the Authority.

DeltaCom filed final best offers as to issues 4(a), 5 and 8(e) on May 4, 2000, amended final best offers as to issues 4(a), 5, and 8(e) on May 12, 2000, and final best offer as to issue 1(a) on May 22, 2000. BellSouth filed final best offers as to issues 4(a), 5 and 8(e) on May 8, 2000, final best offer as to issue 1(a) on May 22, 2000, and a response to DeltaCom's final best offers on July 27, 2000.¹ In addition, BellSouth filed a *Motion for Reconsideration* on May 22, 2000. DeltaCom filed a response to the motion on June 8, 2000, and BellSouth filed a reply to the response on July 26, 2000.

I. Motion for Reconsideration

Filed on May 22, 2000, BellSouth's *Motion for Reconsideration* was directed at the Arbitrator's April 4, 2000 public deliberations, not at any written order. *The Rules of Practice and Procedure Governing Proceedings under Section 252 of the Federal Telecommunications Act of 1996*² do not specifically provide for reconsideration. Moreover, there are no other rules concerning motions for reconsideration of arbitrators' rulings under the Federal Telecommunications Act of 1996.

Two rules, however, do provide guidance. Rule 1220-5-3-.14 --*Arbitration Awards*, of *The Rules of Practice and Procedure Governing Proceedings under Section 252 of the Federal Telecommunications Act of 1996* states in pertinent part: "All awards shall be in writing and shall state the issue and the manner in which the issue has been resolved." (Emphasis added). The *Rules of Practice and Procedure*, Chapter 1220-1 (which were adopted on June 20, 2000 and will become effective on September 13, 2000) and specifically Rule 1220-1-2-.20 --

¹ The Authority did not request responses.

² Both parties orally agreed to abide by these rules at the Pre-Arbitration Conference held on August 4, 1999, and on August 18, 1999 and on October 11, 1999, DeltaCom and BellSouth respectively filed pleadings confirming such agreement.

Petitions for Reconsideration requires that any petition for reconsideration shall be filed within fifteen (15) days after the entry of an order, and should be directed at the written order memorializing the decision made during the deliberations. Using these two rules as guidance, the Arbitrators opine that a petition for reconsideration should be filed within fifteen (15) days after the entry of an order, and should be directed at the findings and/or conclusions that are memorialized in such written order. As no written order had been entered as of May 22, 2000, the Arbitrators conclude that BellSouth's *Motion for Reconsideration* was filed prematurely and, therefore, is dismissed without prejudice.

II. Final Best Offers

- A. Issue 1(a): Should BellSouth be required to comply with performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNEs"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to this Petition?

During the April 4, 2000 deliberations, the Arbitrators concluded that the interconnection agreement should include performance measures and enforcement mechanisms. Thereafter, the Arbitrators adopted BellSouth's September 15, 1999 Service Quality Measurements ("SQMs") and thirty (30) additional measures from the Texas Performance Plan³ with associated definitions and business rules. In addition, the Arbitrators concluded that all measurements shall be at the Tennessee level and BellSouth data should be used for all measurements and calculations. As specified in BellSouth's proposal in the Voluntary Self-Effectuating Enforcement Mechanisms

³ On January 25, 2000, the Arbitrators proposed taking official notice of the ICG arbitration record, Docket No. 99-00377, which contains the final Texas Performance Plan and late filed exhibits outlining the differences in the Texas Plan and BellSouth's Service Quality Measurements ("SQMs"). The Arbitrators gave the parties an opportunity to respond and none objected. Thereafter, the Arbitrators took official notice of Docket No. 99-00377 and relied upon the record in that docket.

("VSEEMs"), BellSouth shall make performance reports available through an electronic medium to DeltaCom on a monthly basis. Finally, the Arbitrators concluded that further information was necessary to fully resolve this issue. Therefore, the Arbitrators requested final best offers on the following five items:

1. The electronic medium to be used in providing DeltaCom with access to the performance report and underlying data;
2. The process to be utilized to determine BellSouth's compliance or non-compliance with the standard and/or benchmark;
3. Standards and/or benchmarks for each measurement. Standards must be specific and measurable. Parity or retail analog should include the specific service to which parity will be measured or the retail analog companion. Additionally, a methodology should be provided for defining or calculating the performance standard and/or benchmark, for each measure, such as the method contained in the VSEEMs for each measure;
4. Enforcement mechanisms. These must be specific and should provide the number of occurrences at which the enforcement mechanism applies (threshold) and the specific enforcement mechanism once the threshold is met. Enforcement mechanisms should be categorized by tiers structured similar to those contained in BellSouth's VSEEMs and should include appropriate caps; and
5. Circumstances that would warrant a waiver request from BellSouth and the time frame for submitting such waiver request.

The Arbitrators also directed BellSouth to file a reasonable commitment date as to when the measurements will be available for the SQMs where it is noted that the level of disaggregation is under development together with the availability date for the thirty (30) additional, adopted measures.

After careful consideration of the parties' final best offers, the Authority finds that the parties failed to properly respond to the specific items listed by the Authority during the April 4, 2000 deliberations. The parties did not simply respond to the five unresolved issues based on the already decided issues. Instead, both parties included alterations and/or amendments to the performance measures adopted by the Authority during the April 4, 2000 deliberations, and then provided final best offers premised upon their suggested altered and/or amended performance

measures. Because the parties failed to take into consideration the decisions of the Arbitrators made during the April 4, 2000 deliberations and provide final best offers based on those decisions, the Arbitrators conclude that resubmission of final best offers on issue 1(a) is necessary. The parties shall resubmit their revised final best offers within fifteen (15) days of the entry of this Order.

B. Issue 4(a): Should BellSouth provide cageless collocation to DeltaCom thirty (30) days after a firm order is placed?

During the April 4, 2000 deliberations, the Arbitrators made the following findings: "Based on the record, DeltaCom's request for thirty days may not be unreasonable in some circumstances. On the other hand, there are scenarios that would require extraordinary actions making a thirty-day deadline impossible. Recognizing the validity of both positions, the Arbitrators request the submission of final best offers." After careful consideration of the final best offers submitted by the parties on this issue, the Arbitrators find that DeltaCom's offer, with one exception, best addresses the concerns of the Arbitrators expressed during the deliberations. Specifically, DeltaCom's final best offer provides for a thirty (30) day interval for the provisioning of cageless collocation and includes a sixty (60) business day maximum, thus, allowing additional time for extraordinary circumstances. BellSouth, on the other hand, did not put forth a minimum interval and set the maximum interval at ninety (90) days for ordinary circumstances and one hundred-thirty (130) days for extraordinary circumstances. For these reasons, the Arbitrators adopt DeltaCom's final best offer on this issue without any reference to adjacent collocation. Further, any language related to adjacent collocation is not to appear in the

final interconnection agreement submitted to the Authority for approval unless specifically negotiated and agreed to by the parties.⁴

C. Issue 5: Should the parties continue operating under existing local interconnection arrangements?

During the April 4, 2000 deliberations, the Arbitrators noted that Exhibit B to the proposed interconnection agreement contained nineteen (19) concerns referencing Issue 5. The Arbitrators found that the concerns could be fundamental to the completion of the interconnection agreement, but further found that the record was insufficient to formulate a sound recommendation. Thereafter, the Arbitrators requested submission of final best offers for each of the nineteen (19) concerns.

The parties reached an agreement as to fifteen (15) of the nineteen (19) concerns. In addition, both parties recognized in their final best offers that the Arbitrators had already resolved the concern related to reciprocal compensation when they disposed of Issue 3(1) during the April 4, 2000 deliberations. This being the case, only three (3) concerns remain. These are (1) the definition of local traffic; (2) the treatment of transit traffic; and (3) binding forecasts.

After careful consideration of the final best offers, the Arbitrators make the following findings. First, the Arbitrators find that BellSouth's proposed definition of local traffic is too broad and that DeltaCom's proposed definition of local traffic provides specific details. Second, the Arbitrators find that DeltaCom's language regarding the treatment of transit traffic is identical to the language in the parties' existing agreement and BellSouth has not provided any justification for deviating from that language. Finally, the Arbitrators find that the Pre-

⁴ At the conclusion of the Arbitrators' August 1, 2000 deliberations, BellSouth requested clarification as to language contained in DeltaCom's final best offer regarding adjacent collocation. After discussion, both parties voluntarily agreed to remove any reference to adjacent collocation from the language adopted by the Arbitrators.

Arbitration Officer's *Report and Initial Order* filed on October 6, 1999 excluded the binding forecast issue from the arbitration and the Arbitrators accepted the *Report and Initial Order* on December 3, 1999. Based on these findings, the Arbitrators adopt DeltaCom's final best offers related to the definition of local traffic and the treatment of transit traffic. In addition, the Arbitrators decline to consider final best offers on the issue of binding forecasts.

D. Issue 8(e): Whether language covering tax liability should be included in the interconnection agreement, and if so, should that language simply state that each party is responsible for its own tax liability?

During the April 4, 2000 deliberations, the Arbitrators requested that the parties submit final best offers setting forth language that clearly and concisely sets forth the tax liabilities of the parties. After careful consideration of the final best offers, the Arbitrators find that DeltaCom's proposal leaves issues open to dispute while BellSouth's language provides a comprehensive scheme for addressing tax liability issues. Moreover, the Arbitrators recognize that, although BellSouth's offer may be better suited to BellSouth than DeltaCom, the offer includes a provision for cooperation and references the dispute resolution process outlined in Section 16 of the proposed Interconnection Agreement. For these reasons, the Arbitrators adopt the final best offer of BellSouth.

III. Ordered

The *Motion for Reconsideration* filed by BellSouth Telecommunications, Inc. is dismissed without prejudice. The parties shall resubmit final best offers as to Issue 1(a) within fifteen (15) days of the entry of this order. The filing shall consist of:

1. The electronic medium to be used in providing DeltaCom with access to the performance reports and underlying data;
2. The process to be utilized to determine BellSouth's compliance or non-compliance with the standard and/or benchmark;

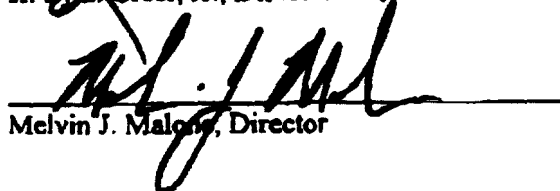
3. Standards and /or benchmarks for each SQM (September 15, 1999 version) and the thirty (30) additional measurements adopted. Standards must be specific. Parity or retail analog should include the specific service to which parity will be measured or the retail analog companion. Additionally, a methodology should be provided for defining or calculating the performance standard and/or benchmark, for each measure, such as the method contained in the VSEEMs for each measure;
4. Enforcement mechanisms. These must be specific and should provide the number of occurrences at which the enforcement mechanism applies (threshold) and the specific enforcement mechanism once the threshold is met. Enforcement mechanisms should be categorized by tiers structured similar to those contained in BellSouth's VSEEMs and should include appropriate caps; and
5. Circumstances that would warrant a waiver request from BellSouth and the time frame for submitting such waiver request.

ITC^DeltaCom Communications Inc.'s final best offer for Issue 4(a) is adopted with the condition that any language related to adjacent collocation not appear in the final interconnection agreement submitted to the Authority for approval. As for Issue 5, ITC^DeltaCom Communications Inc.'s final best offers related to the definition of local traffic and the treatment of transit traffic are adopted. BellSouth Telecommunications, Inc.'s final best offer for Issue 8(e) is adopted.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary